

ORIGINAL

WILKINSON, BARKER, KNAUER & QUINN, ~~BOOK FILE COPY ORIGINAL~~

Washington, DC
Frankfurt, Germany

2300 N Street, NW
Washington, DC 20037-1128

telephone: 202.783.4141
facsimile: 202.783.5851

May 22, 1998

RECEIVED

MAY 22 1998

VIA HAND DELIVERY

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

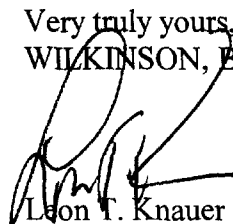
Re: Reply Comments to the Petition for Rulemaking of the
Telecommunications Resellers Association RM — 9249 on behalf of
the Public Service Regulatory Commission of the Republic of Panama

Dear Ms. Roman Salas:

Transmitted herewith, on behalf of the Public Service Regulatory Commission of the Republic of Panama, are an original and four (4) copies of the reply comments to the Petition for Rulemaking of the Telecommunications Resellers Association (RM — 9249).

Should there be any questions regarding the enclosed, please communicate with the undersigned counsel.

Very truly yours,
WILKINSON, BARKER, KNAUER & QUINN, LLP



Leon T. Knauer
M. Veronica Pastor*
Counsel for the Public Service Regulatory Commission
of the Republic of Panama

* Admitted in New York

No. of Copies rec'd
List ABCDE

024

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Petition For Rulemaking Of The)
Telecommunications Resellers Association)
To Eliminate Comity-Based Enforcement Of)
Other Nations' Prohibitions Against The)
Uncompleted Call Signaling Configuration)
Of International Call-back Service)

RM-9249

**REPLY COMMENTS OF THE PUBLIC SERVICE REGULATORY
COMMISSION OF THE REPUBLIC OF PANAMA**

WILKINSON, BARKER, KNAUER & QUINN, LLP

Leon T. Knauer
M. Veronica Pastor
2300 N Street, NW
Washington, DC 20037-1128
(202) 783-4141

Attorneys for the Public Service Regulatory
Commission of the Republic of Panama

May 22, 1998

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

MAY 22 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Petition For Rulemaking Of The)
Telecommunications Resellers Association)
To Eliminate Comity-Based Enforcement Of)
Other Nations' Prohibitions Against The)
Uncompleted Call Signaling Configuration)
Of International Call-back Service)

RM-9249

**REPLY COMMENTS OF THE PUBLIC SERVICE REGULATORY
COMMISSION OF THE REPUBLIC OF PANAMA**

The Public Service Regulatory Commission of the Republic of Panama,¹ through its attorneys, hereby submits its reply comments in opposition to the Petition for Rulemaking of the Telecommunications Resellers Association ("TRA"). In its Petition, TRA advocates abandonment of the Commission's well-established policy of prohibiting U.S. carriers from providing call-back services in those countries which prohibit such practices.

¹ *Ente Regulador de los Servicios Públicos de la República de Panamá*, (hereinafter "Ente").

May 22, 1998

The parties supporting TRA's petition² contend that the Commission's comity-based prohibition of international call-back services in countries where those services are illegal is inconsistent with the Basic Telecommunications Agreement of the World Trade Organization (the "WTO Agreement"). They also contend that the Commission's call-back policy impedes competition and unfairly restricts access for U.S. carriers. As documented herein, the petition of TRA and the comments supporting its position present no facts or arguments which would justify modification of the Commission's call-back policy. Rather, the Commission's policy in this regard is totally consistent with the WTO Agreement; especially as concerns the creation of competitive telecommunications marketplaces.

THE COMMISSION'S POLICY DOES NOT HAMPER MARKET ACCESS AND ITS REMOVAL WOULD HAVE ADVERSE LEGAL AND POLITICAL CONSEQUENCES

The WTO Agreement strengthens the rationale for the Commission's call-back policy. As asserted by Telkom SA Limited of South Africa "the benefits that call back once promised — market opening and international collection rate reductions — are now occurring under the WTO Basic Telecom Agreement without disruptive and destabilizing side effects."³ In this regard, it is relevant that none of the supporting parties are from

² Those parties are Telegroup, Inc., Ursus Telecom Corporation and USA Global Link, Inc. (hereinafter the "Supporting Parties").

³ Telkom SA Limited, comments at 2.

May 22, 1998

countries which are undergoing the transition from a monopoly to a competitive environment, or are in the process of addressing issues such as rate rebalancing, network expansion and the provision of universal and affordable service. The Commission's call-back policy enhances the ability of these countries to achieve these objectives in an orderly fashion. Indeed, a revocation by the Commission of its comity-based call-back prohibition would contravene the WTO Agreement because that Agreement specifies dates by which countries must achieve full liberalization. Accordingly, a determination by a country that call-back is illegal until the date specified for full liberalization is also totally consistent with the WTO Agreement.

In addition, the Commission's call-back policy, which requires U.S. carriers to "provide service in a manner consistent with the laws of the countries in which they operate,"⁴ prohibits U.S. carriers from violating foreign laws and is in the interest of the United States, one of the major beneficiaries of such international cooperation. As the Costa Rican Institute of Electricity ("ICE") correctly notes, the Commission has stressed that "foreign governments which have decided to outlaw uncompleted call signaling bear the principal responsibility for enforcing their domestic laws."⁵ However, because call-back operators lack any facilities, employees, or financial assets in the countries in which they provide services, it is often not possible for the governments in these countries to fully enforce laws restricting or prohibiting call-back. This factor motivated the adoption

⁴ Via USA et al. 9 FCC Rcd. 2888, 2292 (1994).

⁵ Costa Rican Institute of Electricity, comments at 5.

May 22, 1998

by the Commission of its existing policy because the Commission appreciated that its cooperation is essential. As the Philippine Long Distance Telephone Company Inc. asserts, reversal of the call-back policy “ ... would be tantamount to announcing to America’s allies and trading partners, as well as other nations the U.S. wishes to influence, that the American government condoned allowing U.S. companies to violate the laws of the countries in which they operate.”⁶ Such a perception would undermine U.S. efforts to promote greater cooperation in both bilateral and multilateral fora.

CONCLUSION

The Commission’s policy of prohibiting the provision of uncompleted call signaling call-back services in countries that explicitly prohibit this practice is sound policy and should be maintained. Contrary to the assertions of TRA and the supporting parties, the WTO Agreement merely consecrates policies long advocated by the Commission. The failure of the Commission to assist other nations in enforcing the prohibition against international call-back services after having publicly committed to do so would violate well-established principles of international law, as well as undermine the Commission’s credibility and its efforts to foster the opening of global markets to competition.

⁶ Philippine Long Distance Telephone Company Inc. comments at 2.

May 22, 1998

WHEREFORE, premises considered, it is respectfully requested that the Commission deny the petition of the Telecommunications Resellers Association for the initiation of a rulemaking proceeding in this matter.

Respectfully submitted,

**PUBLIC SERVICE REGULATORY
COMMISSION OF THE REPUBLIC OF
PANAMA**

By: 

Leon T. Knauer

M. Veronica Pastor

WILKINSON, BARKER, KNAUER & QUINN, LLP
2300 N Street, NW
Washington, DC 20037-1128
(202) 783-4141

May 22, 1998

CERTIFICATE OF SERVICE

I, Gonzalo García Jiménez, hereby certify that copies of the Reply Comments to the Petition for Rulemaking of the Telecommunications Resellers Association RM — 9249 on behalf of the Public Service Regulatory Commission of the Republic of Panama were mailed this 22nd day of May, 1998, by United States First Class mail, postage prepaid, to the following:

William Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Harold Furchtgott-Roth
Commissioner
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Susan Ness
Commissioner
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Michael Powell
Commissioner
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Gloria Tristani
Commissioner
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

Ari Q. Fitzgerald
Legal Advisor to the Chairman
1919 M Street, N.W.
Suite 814
Washington, D.C. 20554

Kevin Martin, Legal Advisor to
Commissioner Furchtgott-Roth
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

James Casserly, Legal Advisor to
Commissioner Ness
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Kyle D. Dixon, Legal Advisor to
Commissioner Powell
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Paul F. Gallant, Legal Advisor to
Commissioner Tristani
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

Regina M. Keeney, Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Roderick K. Porter, Deputy Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

James L. Ball
Associate Chief, Policy
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Mindy Ginsburg
Associate Bureau Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Peter C. Pappas
Associate Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Robert Calaff, Senior Counsel
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Rebecca Arbogast
Senior Legal Advisor
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Diane J. Cornell, Chief
Telecommunications Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Mindel De La Torre, Deputy Chief
Telecommunications Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

George Li, Deputy Chief
Telecommunications Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Troy Tanner, Chief
Policy and Facilities Branch
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Thomas Wasilewski, Chief
Multilateral & Development Branch
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Richard B. Engelman, Chief
Planning and Negotiations Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Larry W. Olson, Deputy Chief
Planning and Negotiations Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Thomas M. Alberg, Legal Advisor
Planning and Negotiations Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

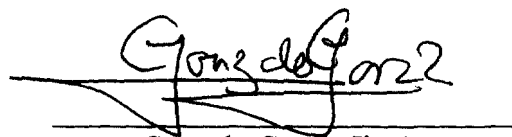
Linda Dubroff, Legal Advisor
Planning and Negotiations Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Charles C. Hunter
Hunter Communications Law Group
1620 I Street, N.W., Suite 701
Washington, D.C. 20006

James Ballis, Chief
Notifications Branch
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Pamela Gerr, Chief
Negotiations Branch
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Suite 800
Washington, D.C. 20554

Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W., Suite 701
Washington, D.C. 20006



Gonzalo Garcia Jimenez